

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSEPH ABRUSCATO, on behalf of himself)
and others similarly situated,)

Plaintiff,)

vs.)

Case No. 12-cv-322

MEDICAL BUSINESS BUREAU, LLC;)
EQUIFAX INFORMATION SERVICES,)
LLC; SWEDISH EMERGENCY)
ASSOCIATES, PC,)

Judge James B. Zagel
Magistrate Judge Maria Valdez

Defendants.)
)
)
)

DEFENDANT SWEDISH EMERGENCY ASSOCIATES, PC's
12(b)(6) MOTION TO DISMISS

Swedish Emergency Associates, PC (“Swedish Emergency”), by its attorneys, Foley & Lardner LLP, respectfully moves the Court to dismiss Plaintiff Joseph Abruscato’s (“Plaintiff”) sole claim against Swedish Emergency with prejudice, and in support thereof states as follows:

1. Plaintiff purports to bring a claim against Swedish Emergency under the Illinois Consumer Fraud Act, 815 ILCS 505/2 (the “ICFA”) due to alleged attempts to collect—not on the part of Swedish Emergency, but rather others—from Plaintiff amounts owed on a medical bill for which Plaintiff says he made a claim under the Illinois Workers Compensation Act. (Compl. at Count IV) Plaintiff alleges no conduct on the part of Swedish Emergency that could even remotely be considered a deceptive act, which Plaintiff must do to state a claim under the ICFA. *E.g., Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134, 149, 776 N.E.2d 151, 160 (Ill. 2002). To the contrary, Plaintiff alleges that Swedish Emergency billed Plaintiff’s *employer* for the treatment, and that Plaintiff’s *employer’s* error resulted in nonpayment of the medical bill.

(Compl. at ¶¶ 15-16 & Ex. A) Plaintiff alleges no further conduct on the part of Swedish Emergency.

2. Rather, the sole claim Plaintiff raises against Swedish Emergency is based on his conclusory allegation that Swedish Emergency is “liable as the principal for collection efforts of Defendant Medical Business Bureau, LLC [‘MBB’] and any other collection agencies it used” (*Id.* at ¶ 79), and that MBB purportedly was acting as an agent for Swedish Emergency (*Id.* at ¶ 20). However, Plaintiff can state no fact suggesting that there is an agency relationship between Swedish Emergency and MBB and there, in fact, is no agency relationship here. Under controlling law, Plaintiff’s conclusory allegation of agency carries no weight. Swedish Emergency must be dismissed from this lawsuit as Plaintiff’s ICFA claim against Swedish Emergency fails as a matter of law. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also, e.g., Sefton v. Toyota Motor Sales U.S.A.*, No. 09 C 3787, 2010 WL 1506709, *3 (N.D. Ill. Apr. 14, 2010); *Tribett v. BNC Mortg., Inc.*, No. 07 C 2809, 2008 WL 162755 (N.D. Ill, Jan. 17, 2008).

3. Swedish Emergency further incorporates by reference its Memorandum in Support of its Motion to Dismiss, which it is filing contemporaneously herewith.

WHEREFORE, Defendant Swedish Emergency Associates respectfully requests that this Court:

- a. Grant this Motion;
- b. Dismiss Count IV of Plaintiff’s Complaint with prejudice; and
- c. Award Swedish Emergency any other relief that the Court deems just and equitable.

Dated: February 28, 2012

Respectfully submitted,

s/Benjmain B. Folsom

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CERTIFICATE OF SERVICE

I, Benjamin B. Folsom, an attorney, hereby certify that on February 28, 2012, I electronically filed the foregoing **Defendant Swedish Emergency Associates, P.C.'s 12(b)(6) Motion to Dismiss** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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